

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8314 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

CHANDUBHAI MOHMADBHAI CHAUHAN

Versus

SUPERINTENDENT

Appearance:

Mr.Nirav C.Thakkar for
MR ASHISH H SHAH for Petitioner
Mr.A.J.Desai, learned AGP for Respondents

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 10/03/2000

ORAL JUDGEMENT

This Special Civil Application by the detenu was
filed through Jail. The detention order dt.26.4.99
passed by the District Magistrate, Vadodara detaining the
petitioner under the provisions of the Gujarat Prevention

of Anti Social Activities Act, 1985 as a dangerous person within the meaning of S.2(c) of the Act is under challenge. The petitioner is detained in Bhavnagar District Jail, Bhavnagar. The grounds of detention as enclosed with the detention order show that 3 criminal cases under Chapters 16 and 17 of the I.P.C. were registered against the petitioner, 2 were registered at Bhadrin Police Station and 1 at Savli Police Station. At the time when the detention order was passed all the three cases were under police investigation. The detaining authority has mentioned that the petitioner has an image of Dada and had raised his own gang of goondas and was engaged in anti social activities. A mention has been made that three witnesses had deposed against the petitioner's anti social activities. These witnesses had deposed that petitioner was a head strong person and keeps deadly weapons and has been making violence. The detaining authority found that the fear of the witnesses was genuine and, therefore, to keep their identity undisclosed, S.9(2) has been invoked.

No reply to the petition has been filed by the respondents. The statement of learned counsel for the petitioner that in exactly identical matter i.e. Spl.C.A.No.5130/99 petitioner's co-detenu was released by a Bench of this Court on 18.1.2000 is not contested by the learned A.G.P. In the decision dt.18.1.2000 in Special Civil Application No.5130/99 a Co-ordinate Bench of this Court has considered the Supreme Court decision in the case of Pradeep Nilkanth Paturker v. State of Maharashtra, reported in AIR 1994 SC 656 in which case the Supreme Court has observed that delay in taking action under detention law is fatal to the validity of the detention order. In the case of Elesh Patel v. State of Gujarat, reported in 1997(1) GLH 381 it was held that in absence of reasonable explanation for delayed action, the detention order cannot be sustained. The learned counsel for the petitioner has submitted that in the instant case, the last criminal case registered against the petitioner was of 20.12.98 and in the grounds of detention, neither the dates on which the statements of three witnesses had been recorded had been given nor the dates of the incident about which the deposition had been made had been given and the detention order has been passed on 26.4.99. Thus the delay in passing the detention order has remained unexplained and that defeats the very purpose of passing the detention order and also renders the detention order to be illegal. The impugned detention order dt.26.4.99 passed by the District Magistrate, Vadodara therefor deserves to be quashed and set aside on this ground alone. Since the petition

succeeds on this ground alone, it is not necessary for this court to consider and adjudicate the other grounds.

In the result, the impugned detention order dated 26.4.99 passed by the District Magistrate, Vadodara is hereby quashed and set aside. It is directed that the petitioner detained in Bhavnagar District Jail, Bhavnagar be released forthwith if not required to be detained under any other detention order or in any other criminal case. This Special Civil Application is allowed. Rule is made absolute.

(M.R.Callal, J)